

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

JUN 18 2003

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte NORBERT WOLTERS
and
RICHARD WÜBBELS

Application No. 09/727,134

ORDER RETURNING UNDOCKETED APPEAL

This application was received at the Board of Patent Appeals and Interferences on May 5, 2003. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith returned to the examiner. The matters requiring attention prior to docketing are identified below.

An examination of the file reveals that an Appeal Brief was filed on November 13, 2002 (no paper number given). It should be noted that the Appeal Brief has not been physically entered onto the Contents page of the application. Correction is requested. The examiner acknowledged the Appeal Brief in a communication mailed December 27, 2002 (Paper No. 11).

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Section 1208 of the Manual of Patent Examining Procedure

(7th Ed., Feb. 2000) (MPEP) states:

(A) REQUIREMENTS FOR EXAMINER'S ANSWER.
The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

(9) References of Record. A listing of the references of record relied on, and, in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed December 27, 2002 (Paper No. 11) does not comply with the above requirement. Correction is required.

Pursuant to a memorandum dated April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: . . . (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

If the Weigert reference (WO 99/03323) is to be included in the "References of Record" of the Examiner's Answer mailed December 27, 2002 (Paper No. 11), this file is not in compliance

with the above requirement because it does not contain an English translation of the Weigert reference, WO 99/03323 dated January 28, 1999.

Finally, an examination of the file reveals that a supplemental Information Disclosure Statement (IDS) was filed August 27, 2002 (Paper No. 9). It is not apparent from the record whether the examiner considered the statement submitted or notified appellants of why their submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98. A communication notifying appellant of the Primary Examiner's decision is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

1. for physical entry of the Appeal Brief filed November 13, 2002 onto the Contents page of the application wrapper;
2. for inclusion and proper response to the "References of Record" section in the Examiner's Answer mailed December 27, 2002 (Paper No. 11);

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3. If appropriate, for providing a certified English language translation for the Weigert reference, WO 99/03323 dated January 28, 1999;

4. for consideration of the supplemental IDS filed August 27, 2002 (Paper No. 9) with appropriate notification to appellants regarding the Examiner's decision; and

5. for such further action as may be appropriate.

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